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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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11 Attorneys for Defendant  
Insurance Corporation of New York  
12

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 FAIRMONT SPECIALTY INSURANCE ) No. C 07-03421 JL VRW  
COMPANY, a Delaware corp- )  
17 oration, and TIG INSURANCE )  
COMPANY, a California )  
18 corporation, ) ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT FOR  
19 Plaintiffs, ) DECLARATORY RELIEF AND  
EQUITABLE CONTRIBUTION; DEMAND  
20 vs. ) FOR JURY TRIAL

21 INSURANCE CORPORATION OF NEW )  
YORK, a New York corporation, )  
22 DEPENDABLE SHEET METAL, a )  
California corporation, and )  
23 DOES 1 through 10, )  
24 Defendants. )

25  
26 Defendant Insurance Corporation of New York  
27 ("INSCORP"), in response to the Complaint of plaintiffs Fairmont  
28 Specialty Insurance Company ("Fairmont") and TIG Insurance

1 Company ("TIG"), hereby admits, denies and alleges as follows:

2 THE PARTIES

3 1. On information and belief, INSCORP admits the  
4 allegations of paragraph 1 of the Complaint.

5 2. On information and belief, INSCORP admits the  
6 allegations of paragraph 2 of the Complaint.

7 3. On information and belief, INSCORP admits the  
8 allegations of paragraph 3 of the Complaint.

9 4. On information and belief, INSCORP admits the  
10 allegations of paragraph 4 of the Complaint.

11 5. INSCORP is without sufficient knowledge or  
12 information to form a belief with respect to the allegations of  
13 paragraph 5 of the Complaint.

14 GENERAL ALLEGATIONS

15 6. On information and belief, INSCORP admits the  
16 allegations of paragraph 6 of the Complaint.

17 7. On information and belief, INSCORP admits that  
18 Dependable was named as a defendant or cross-defendant in the  
19 *Dependable* actions. INSCORP is without sufficient knowledge or  
20 information to form a belief with respect to the remaining  
21 allegations of paragraph 7 of the complaint.

22 8. On information and belief, INSCORP admits that  
23 Dependable was insured under the referenced Transamerica and  
24 Ranger policies, and that Dependable was insured under INSCORP  
25 policy numbers CAIC 10016984-00 effective 08/09/97 to 12/01/98,  
26 CAIC 10016984-01 effective 12/01/98 to 12/01/99, CAIC 10016984-  
27 02 effective 12/01/99 to 12/01/00 and CAIC 10016984-03 effective  
28 12/01/00 to 12/01/01.

1           9. On information and belief, INSCORP admits that  
2 Ranger and/or Transamerica provided a defense and/or  
3 indemnification for Dependable under some of the *Dependable*  
4 actions. Except as expressly admitted, INSCORP denies each and  
5 every allegation of paragraph 9 of the Complaint.

6           10. INSCORP admits that it declined a defense and/or  
7 indemnification to its insured in some, but not all, of the  
8 underlying *Dependable* actions, based in whole or in part upon an  
9 exclusion to the INSCORP policies, which exclusion is recited in  
10 part in paragraph 10 of the Complaint. Except as expressly  
11 admitted, INSCORP denies each and every allegation of paragraph  
12 10 of the Complaint.

13           11. On information and belief, INSCORP admits the  
14 allegations of paragraph 11 of the Complaint.

15           12. On information and belief, INSCORP admits the  
16 allegations of paragraph 12 of the Complaint.

17           13. INSCORP denies that it declined Dependable's  
18 tender of a defense in the James and Craig *Dependable* actions  
19 referenced in the Complaint. INSCORP admits that it declined  
20 Dependable's tender of defense in the remaining *Dependable*  
21 actions referenced in the Complaint, citing the exclusion  
22 alleged in paragraph 10 of the Complaint. Except as expressly  
23 admitted, INSCORP denies each and every allegation of paragraph  
24 13 of the Complaint.

25           14. INSCORP denies that it declined Dependable's  
26 tender of a defense in the James and Craig *Dependable* actions  
27 referenced in the Complaint. On information and belief, INSCORP  
28 admits that with respect to the remaining *Dependable* actions

1 alleged in the Complaint, INSCORP declined Dependable's tender  
2 of defense based in whole or in part upon the policy provisions  
3 as recited in part in paragraph 10 of the Complaint. Except as  
4 expressly admitted, INSCORP denies each and every allegation of  
5 paragraph 14 of the Complaint.

6 15. INSCORP denies each and every allegation of  
7 paragraph 15 of the Complaint and the whole thereof.

8 16. INSCORP denies each and every allegation of  
9 paragraph 16 of the Complaint.

10 17. INSCORP denies each and every allegation of  
11 paragraph 17 of the Complaint.

12

13

FIRST CAUSE OF ACTION

14

15 18. INSCORP realleges and incorporates by reference  
16 herein each paragraph above as though fully set forth herein in  
17 answer to paragraph 18 of the Complaint.

17

18 19. INSCORP admits that an actual controversy has  
19 arisen and exists between plaintiffs on the one hand, and  
20 INSCORP. However, INSCORP denies that there is a controversy  
21 between plaintiffs, on the one hand, and their insured,  
22 Dependable, on the other hand. To the contrary, INSCORP alleges  
23 that the interest of plaintiffs and Dependable are aligned in  
24 this action.

24

25

SECOND CAUSE OF ACTION

26

27 20. INSCORP realleges and incorporates by reference  
28 herein each paragraph above as though fully set forth herein in  
answer to paragraph 20 of the Complaint.

1           21. INSCORP denies the allegations of paragraph 21 of  
2 the Complaint.

3  
4           For its separate and affirmative defenses, defendant  
5 INSCORP alleges:

6                           FIRST AFFIRMATIVE DEFENSE

7           22. The Complaint is barred in whole or in part by  
8 the doctrine of laches, estoppel, waiver and/or unclean hands.

9  
10                          SECOND AFFIRMATIVE DEFENSE

11           23. Plaintiffs' claims are barred to the extent that  
12 the equities do not preponderate in plaintiffs' favor.

13  
14                          THIRD AFFIRMATIVE DEFENSE

15           24. Plaintiffs' claims are barred to the extent that  
16 plaintiffs acted as a volunteer.

17  
18                          FOURTH AFFIRMATIVE DEFENSE

19           25. Plaintiffs' claims are barred by all applicable  
20 statutes of limitation, including without limitation Cal. Code  
21 Civ. Proc., Sections 338 (a) and (b), 337, 337.1 (a) and 339.

22  
23                          FIFTH AFFIRMATIVE DEFENSE

24           26. Plaintiffs' claims are barred to the extent that  
25 their policies do not afford coverage for the underlying  
26 lawsuits against the insured.

27 ///

28 ///

1 SIXTH AFFIRMATIVE DEFENSE

2 27. Plaintiffs' claims are barred to the extent that  
3 their insured is different from INSCORP's insured.  
4

5 SEVENTH AFFIRMATIVE DEFENSE

6 28. Plaintiffs' claims are barred to the extent that  
7 INSCORP's policies are excess to plaintiffs' policies.  
8

9 EIGHTH AFFIRMATIVE DEFENSE

10 29. Plaintiff's claims are barred to the extent that  
11 they are premature.  
12

13 WHEREFORE, defendant INSCORP prays for judgment  
14 against plaintiffs as follows:

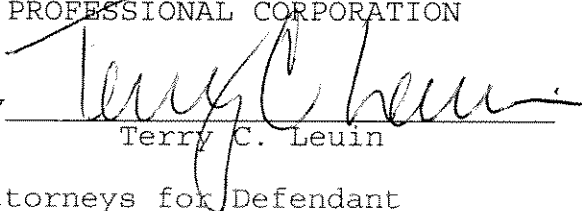
15 (a) That plaintiffs take nothing by their  
16 Complaint;

17 (b) That INSCORP be awarded its costs of  
18 suit and reasonable attorneys' fees  
19 incurred herein;

20 (c) For such other and further relief as  
21 the Court may deem just and proper.  
22

23 COTKIN & COLLINS  
24 A PROFESSIONAL CORPORATION

25 By

  
Terry C. Leuin

26  
27 Dated: July 3, 2007

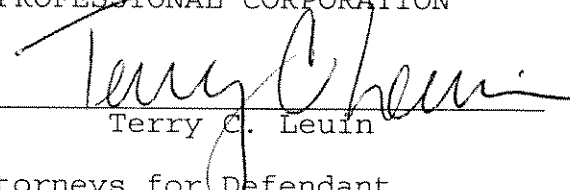
Attorneys for Defendant  
Insurance Corporation of New York  
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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, defendant INSCORP  
hereby demands a trial by jury of all issues triable by jury as  
a matter of right.

COTKIN & COLLINS  
A PROFESSIONAL CORPORATION

By

  
Terry C. Leuin

Dated: July 3, 2007

Attorneys for Defendant  
Insurance Corporation of New York

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, PAT MEDINA, am employed in the aforesaid County, State  
4 of California; I am over the age of 18 years and not a party to  
the within action; my business address is 300 South Grand  
Avenue, 24th Floor, Los Angeles, California 90071-3134.

5 On July 3, 2007, I served the foregoing **ANSWER AND**  
6 **AFFIRMATIVE DEFENSES TO COMPLAINT FOR DECLARATORY RELIEF AND**  
7 **EQUITABLE CONTRIBUTION; DEMAND FOR JURY TRIAL** on interested  
parties in this action by placing a true copy thereof, enclosed  
in a sealed envelope, addressed as follows:

8  
9 George D. Yaron, Esq.  
Henry M. Su, Esq.  
10 Yaron & Associates  
601 California Street, 21st Floor  
11 San Francisco, CA 94108

12  
13 **X BY FIRST CLASS MAIL:** I placed such envelope for deposit in the U.S. Mail  
for service by the United States Postal Service, with first-class postage  
thereon fully prepaid. I am readily familiar with my employer's practice  
14 for the collection and processing of mail. Under that practice, envelopes  
would be deposited with the U.S. Postal Service that same day, with first  
15 class postage thereon fully prepaid, in the ordinary course of business.  
I am aware that on motion of the party served, service is presumed invalid  
16 if the postal cancellation date or postage meter date is more than one day  
after the date of deposit for mailing shown in this proof of service.

17  
18 **BY FACSIMILE:** I caused the document to be transmitted by facsimile  
machine compliant with Rule 2003 of Calif. Rules of Court to the offices  
of the addressees at the telephone numbers shown on the service list.

19  
20 **BY HAND DELIVERY:** I caused such envelope to be delivered by hand to the  
offices of the addressees.

21  
22 **BY FEDERAL EXPRESS:** I am readily familiar with my employer's practice for  
collection and processing of FedEx packages. Under that practice,  
packages would be deposited with FedEx that same day, with overnight deli-  
very charges thereon fully prepaid, in the ordinary course of business.

23 **X (Federal Courts Only)** I declare that I am employed in the office of a  
24 member of the court at whose direction this service was made.

25 I declare under penalty of perjury under the laws of the  
26 State of California that the foregoing is true and correct and  
that this document was executed on July 3, 2007, at Los Angeles,  
California.

27   
28